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MEDIA, INC., and JOSE DAVID HERNANDEZ

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a California
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

Case No.:

1:20-cv-00988-DAD-BAM

**DECLARATION OF JESUS
CHAVEZ, SR. IN SUPPORT OF
PLAINTIFF AND
COUNTERDEFENDANTS'
MOTION TO DISMISS
DEFENDANT'S
COUNTERCLAIMS AND
SUPPLEMENTAL BRIEF**

Judge: Hon. Dale A. Drozd

Date: August 10, 2021

Time: 9:30 A.M.

Courtroom: Courtroom 5, 7th floor

1)
2 HYPHY MUSIC, INC.,)
3)
4 Counterclaimant,)
5)
6 v.)
7)
8 YELLOWCAKE, INC., COLONIZE)
9 MEDIA, INC., JOSE DAVID)
10 HERNANDEZ, JESUS CHAVEZ, SR.,)
11)
12 Counterdefendants.)
13)

11 JESUS CHAVEZ, SR., declares under penalty of perjury the following to be
12 true and correct pursuant to 28 U.S.C. § 1746:

13 1. I make this declaration in further support of the
14 Plaintiff/Counterdefendants' motion to dismiss and supplemental briefing concerning
15 Defendant/Counterclaim Plaintiff, Hyphy Music, Inc.'s, ("Hyphy") counterclaims.

16 2. I make this declaration based on my firsthand knowledge of the facts and
17 circumstances of this matter. Further, I have reviewed all of the pleadings filed in this
18 matter as well as the supplemental briefing documents submitted by Defendant Hyphy.

19 3. I am the founder and principal of the band Los Originales de San Juan
20 (the "Band").

21 4. I founded the Band in approximately 1987.

22 5. Since its founding, the band has recorded approximately 39 albums and
23 over 900 songs.

24 6. On or about September 16, 2013, I entered into an oral distribution
25 agreement with Hyphy whereby Hyphy agreed to distribute three albums to be
26 recorded by the Band.

27 7. Between September 2013 and sometime in 2015, the Band recorded the
28 six albums including: (i) Los Originales de San Juan- El Campesino (ii) Los Originales

1 de San Juan- Corridos de Poca M... (iii) Los Originales de San Juan- En Vivo Desde
2 La Cantina de Mi Barrio; (iv) Los Originales de San Juan- Nuestra Historia En Vivo;
3 (v) Los Originales de San Juan- Amigos y Contrarios and (vi) Los Originales de San
4 Juan- Naci Con Suerte de Rey Con Mariachi (the "Albums") which were subsequently
5 distributed by Hyphy.

6 8. I was the primary producer and the sole author of the sound recordings of
7 the Albums. At no time during the recording of the Albums did any shareholder
8 principal, employee, or anybody else affiliated with Hyphy provide any creative input
9 into the recording of the Albums or provide any original material with regards to the
10 sound recordings of the Albums.

11 9. Hyphy's allegations in their counterclaim, amended counterclaim and
12 supplemental briefing regarding the alleged artistic control they exerted over the
13 albums is false. At no point did Hyphy select the musical compositions to be recorded
14 on the Albums, commission and/or provide the sound engineers and audio-visual
15 directors for the albums, produce the musical performances to be embodied on the
16 albums, nor direct the recording and filming of musical and audiovisual performances
17 to be embodied on the Albums. No employee of Hyphy contributed any creative input
18 that could deem Hyphy a coauthor of any of the Albums.

19 10. Also, Contrary to the Declaration of Jose Martinez, neither Javier
20 Elizando nor Marcelino Mendoza provided any services to me in connection with the
21 recording or performance of the Albums and made no creative contributions that can
22 be considered some sort of co-authorship. They were not members of my Band and
23 were not involved with the recording of the Albums.

24 11. The only other person involved with the recording of the Albums other
25 than the Band was an independent audio recording engineer named Omar Rosales who
26 the Band engaged to record the Albums. Omar Rosales was not engaged,
27 commissioned, nor hired by Hyphy.
28

1 12. I have never been employed by Hyphy, nor did Hyphy have control over
2 the recording and production of the Albums. I never received any compensation from
3 Hyphy other than as a royalty from net sales of the Albums.

4 13. The Albums were never produced as a “work-for-hire” for Hyphy nor was
5 it ever understood or agreed that Hyphy would be deemed or agreed to be a co-author
6 of the Albums.

7 14. Prior to 2019, I never agreed to transfer, sell or otherwise alienate any of
8 my ownership interest in the sound recordings of the Albums to Hyphy or anyone else
9 or deem anyone else a coauthor.

10 15. In or about 2019, I sold the entirety of all rights, title and interest in the
11 copyrights of the sound recordings of the Albums to Plaintiff Yellowcake, Inc.
12 (“Yellowcake”) pursuant to a written agreement. Yellowcake is the sole and exclusive
13 owner of the copyrights in the sound recordings of the Albums and has been since
14 2019.

15 16. Furthermore, I would like to advise the Court that Hyphy’s claims
16 regarding the master copies of the Albums have no merit whatsoever. The Albums
17 were recorded via digital medium and there are no particular physical master
18 recordings of the Albums. When I sold the rights to the sound recordings of the
19 Albums to Yellowcake, I provided Yellowcake with digital copies of the final
20 recordings of the Albums. I never delivered any original, unreproducible, physical
21 master recordings of the Albums to either Yellowcake or Counterclaim Defendant Jose
22 David Hernandez (“Mr. Hernandez”).

23 17. Digital copies of the Albums are completely fungible and an infinite
24 number of copies of the Albums can be reproduced in the same quality that is equal to
25 the final copy produced at the original recording sessions and delivered to Hyphy for
26 distribution.

27 18. To the best of my knowledge, Hyphy continues to possess digital copies
28 of the master recordings of the Albums as they were recorded at the initial recording

1 sessions and could easily make copies of the Albums without any issue if it owned the
2 rights to the sound recordings, although it does not. As such, Hyphy's allegations that
3 Mr. Hernandez somehow converted the original master recordings of the Albums or
4 interfered with Hyphy's ability to exploit the master recordings of the Albums, are
5 blatantly false.

6 19. Lastly, Jose Martinez, the person who submitted a declaration in support
7 of Hyphy's supplemental briefing, was never involved in the recording of the Albums
8 and therefore has no firsthand knowledge regarding the true authorship of the Albums.
9 He was never present in the recording studio and had absolutely no involvement in the
10 recording of the Albums. Nor have I ever made any agreements with Mr. Martinez
11 regarding ownership of the Albums.

12 20. I believe that the defendants in this action only filed copyright
13 registrations in the sound recordings of the Albums, seven years after first publication
14 and after they were sued by Yellowcake for copyright infringement, to countersue
15 Yellowcake as part of a litigation strategy devised by their counsel to try and offset
16 Defendants strict liability to Yellowcake.

17 21. I respectfully request that the Court determine that the copyright
18 registrations filed by Hyphy in connection with the sound recordings of the Albums be
19 canceled and that the Court grant Plaintiff/Counterdefendants' motion to dismiss the
20 counterclaims in their entirety and grant Plaintiff/Counterdefendants judgment on their
21 claims against the Defendants.

22 I declare under penalty of perjury under the laws of the United States that the
23 foregoing is true and correct.

24
25 Dated: August 9, 2021

26 
27 JESUS CHAVEZ, SR.
28